Vandelay Ventures Sdn Bhd & Anor v Ketua Pengarah, Lembaga Minyak Sawit Malaysia & Anor

HIGH COURT (SHAH ALAM) — JUDICIAL REVIEW NO BA-25–60–08 OF 2020
ABD MAJID J
8 MARCH 2020

Administrative Law — Judicial review — Application for — Application for judicial review against decision of Director General of Malaysian Palm Oil Board — Respondents' officials conducted a raid and seized oil in storage facility — Applicants claimed title to seized oil — First respondent rejected both applications and cited that matter was under investigation — Whether impugned decision was mala fide and discretion was illegitimately exercised — Whether first respondent was no longer seised with power to return or release seized oil once prosecution was instituted — Malaysian Palm Oil Board Act 1998 ss 56(3) & 57

This was a judicial review application ('encl 12') for the first respondent's decision made on 4 August 2020, where it refused to return the seized used cooking oil to the applicants. The first and the second applicant had separately entered into several contracts with Kazhou Pte Ltd ('KPL') incorporated in Singapore, to sell and forward 6,000 mt and 4,200 mt of used cooking oil ('seized oil') respectively and KPL in turn appointed Kyrox Sdn Bhd ('KSB') to export the seized oil to one company Oberosterreichische Biodiesel-Bulgaria Ltd being the purchaser. Pursuant to the said contracts the first applicant had forwarded 5,000 mt while the second applicant had forwarded 4,200 mt of the seized oil in stages to a storage facility in Butterworth prior exportation. On 26 May 2020, the respondents' officials conducted a raid and seized the said oil. As there was no further action being taken up, the solicitors acting for both the applicants separately wrote to the first respondent on 22 July 2020 and 23 July 2020 seeking for the return of the seized oil. Both the applicants claimed title to the seized oil as KPL had not paid them in full. The first respondent vide a letter dated 4 August 2020 rejected both applications citing the matter was under investigation. The application was premised on the following: (a) impugned decision was unreasonable; (b) respondents had not acted in good faith and without reasonable belief in making the impugned decision and had violated the principle of natural justice; and (c) the refusal to return the seized oil was not in accordance with recognised principles. The respondents in turn opposed the application and averred that KSB was not a licensed exporter for sludge palm oil and was arraigned on a charge of attempting to export palm oil without licence under reg 5(1)(i) of the Regulations on 1 September 2020 and due to that pending prosecution, the seized oil could not be released or returned.

Held, dismissing the application with costs:

(1) The complaints were that the propriety right over the seized oil remained with the applicant since KPL had not paid the purchase price in full. The contracts entered were terminated by the applicants on 21 August 2020. The question of propriety right was not relevant at this stage particularly when the matter was pending before the Magistrate Court in Butterworth. It was for the presiding magistrate to decide at the end of the day in accordance with s 56 of the of the Malaysian Palm Oil Board Act 1998 ('the Act'), not this court (see para 17).

(2) The first respondent no longer had the power to return or release the seized oil once a prosecution was instituted. It was for the same reason that this court had no power to return it at this stage, even if the decision of the first respondent was tainted with illegality, irrationality or procedural impropriety. It was not the business of a civil court to meddle into the affairs of a criminal court. Even if the evidence was illegally obtained, it was admissible. The so-called propriety right can be asserted in a civil suit against KPL and it was not for this court to decide on that issue in this application (see para 18).

(3) Section 57 of the Act would apply when there was no prosecution and sub-s 56(3) dealt with seizure which did not culminate in a prosecution and was not applicable to this case. The prosecution was instituted after the decision was made, meaning that the matter was under investigation at the material time. Hence, the seized oil could not be returned or released as such action may stifle any impending prosecution (see paras 19–20).

(4) The court was of the view that it was within the authority of the first respondent to dispose the seized oil pursuant to s 53 of the Act but of course, not at his whims and fancies. There were pre-conditions to be satisfied before such powers could be exercised. Nonetheless, the recourse was to sue for damages if the applicants could prove that the action of the first respondent was flawed. The decision dated 4 August 2020 was not amenable to judicial review (see para 21).

[Bahasa Malaysia summary

Ini adalah permohonan semakan kehakiman ('lampiran 12') ke atas keputusan responden bertarikh 4 Ogos 2020 yang menolak permohonan pemohon untuk memulangkan minyak masak terpakai yang disita kepada permohon. Pemohon pertama dan kedua telah memasuki kontrak secara berasingan dengan Kazhou Pte Ltd ('KPL'), sebuah syarikat yang diperbadankan di Singapura, untuk menjual minyak terpakai sebanyak 6,000 mt dan 4,200 mt dan KPL melantik syarikat Kyrox Sdn Bhd ('KSB') untuk mengeksport minyak terpakai tersebut ke syarikat Oberosterreichische Biodiesel-Bulgaria Ltd sebagai pembeli. Pemohon pertama telah menghantar 5,000 mt dan

pemohon kedua telah menghantar 4,200 mt minyak terpakai tersebut secara berperingkat di stor di Butterworth sebelum pengeksportan. Pada 26 Mei 2020, pegawai responden telah membuat serbuan dan menyita minyak terpakai tersebut. Memandangkan tiada tindakan lanjut diambil, peguamcara pemohon-pemohon telah menulis surat kepada responden pada 22 July 2020 dan 23 July 2020 untuk memohon pemulangan minyak terpakai yang disita tersebut. Kedua pemohon tersebut mendakwa pemilikan minyak terpakai tersebut kerana KPL belum lagi membayar penuh minyak terpakai tersebut. Responden pertama melalui surat bertarikh 4 Ogos 2020 menolak permohonan pemohon-pemohon dan menyatakan bahawa perkara tersebut sedang dalam siasatan. Permohonan lampiran 12 ini bersandarkan isu-isu berikut: (a) keputusan responden yang tidak munasabah; (b) responden bertindak secara mala fide dan tanpa kepercayaan yang munasabah dalam membuat keputusan yang melanggar prinsip keadilan semula jadi; dan (c) keengganan untuk mengembalikan minyak terpakai yang disita tidak mengikut undang-undang. Responden pula menentang permohonan ini dan menegaskan bahawa KSB bukan pengeksport berlesen bagi minyak sawit terpakai dan telah ditangkap atas tuduhan cuba mengeksport minyak sawit tanpa lesen di bawah peraturan 5(1)(i) Peraturan pada 1 September 2020 dan disebabkan oleh perkara ini masih di dalam peringkat pendakwaan, minyak terpakai yang disita tidak boleh dilepaskan atau dipulangkan.

Diputuskan, menolak permohonan dengan kos:

(1) Terdapat isu pemilikan memandangkan KPL belum membayar habis pembelian minyak pakai tersebut. Kontrak telah ditamatkan pada 21 Ogos 2020. Persoalan pemilikan minyak terpakai tersebut adalah tidak relevan pada peringkat permohonan ini memandangkan perkara ini masih di perikat pendakwaan di Mahkamah Majistret Butterworth. Hal ini dibawah bidang kuasa majistret untuk memutuskan perkara pendakwaan tersebut menurut s 56 Akta Lembaga Minyak Sawit Malaysia ('Akta tersebut'), bukannya mahkamah ini (lihat perenggan 17).

(2) Responden pertama tidak lagi mempunyai kuasa untuk melepaskan atau memulangkan minyak terpakai yang disita tersebut apabila pendakwaan telah dimulakan. Atas alasan yang sama, mahkamah ini tidak mempunyai kuasa untuk memulangkannya pada peringkat ini, walaupun keputusan responden pertama tersebut adalah tidak sah, tidak munasabah dan tidak mengikut prosedur yang betul. Mahkamah sivil tidak boleh mencampuri urusan mahkamah jenayah. Walaupun bukti-bukti diperoleh secara tidak sah, ianya masih boleh diterima. Dakwaan mengenai pemilikan boleh dimulakan melalui tuntutan sivil terhadap KPL dan bukannya mahkamah ini untuk memutuskan perkara tersebut (lihat perenggan 18).

(3) Seksyen 57 Akta tersebut terpakai apabila tiada pendakwaan dimulakan manakala sub-s 56(3) adalah mengenai penyitaan yang tidak berkaitan dengan pendakwaan yang mana tidak terpakai di dalam kes ini. Pendakwaan telah dimulakan setelah keputusan responden dibuat, yang mana perkara tersebut tdi dalam penyiasatan. Oleh yang demikian, minyak terpakai yang disita tersebut tidak boleh dilepaskan atau dipulangkan kerana perbuatan demikian akan menganggu kes pendakwaan (lihat perenggan 19–20).

(4) Mahkamah ini berpendapat bahawa adalah di bawah kuasa responden pertama untuk melupuskan minyak masak yang disita tersebut menurut s 53 Akta tersebut, namun ianya bukan dibuat secara sewenangnya. Terdapat prasyarat yang perlu dipenuhi untuk melupuskan minyak terpakai tersebut. Walau apa pun keadaan, pemohon-pemohon boleh menyaman responden sekiranya perbuatan melupus minyak terpakai tersebut dibuat secara salah. Keputusan responden bertarikh 4 Ogos 2020 tidak boleh disemak secara kehakiman (lihat perenggan 21).]

Cases referred to

Abdul Aziz Lebai Milin & Ors v Suruhanjaya Pengangkutan Awam Darat [2016] MLRHU 1613 (refd)

Ahmad Azam bin Mohamad Salleh & Ors v Jabatan Pembangunan Koperasi Malaysia & Ors [2004] 4 MLJ 86, HC (refd)

City Growth Sdn Bhd & Anor v The Government of Malaysia [2006] 1 MLJ 581, HC (refd)

Dato' Seri Anwar Ibrahim v Mohamad Hanafiah Zakaria & Ors [2012] 7 CLJ 609, HC (refd)

Empayar Canggih Sdn Bhd v Ketua Pengarah Bahagian Penguatkuasa Kementerian Perdagangan Dalam Negeri dan Hal Ehwal Pengguna Malaysia & Anor [2018] supp MLJ 16, FC (folld)

Government of Malaysia v Lim Kit Siang [1988] 2 MLJ 12, SC (refd)

Menteri Besar Negeri Pahang Darul Makmur v Seruan Gemilang Makmur Sdn Bhd [2010] 4 MLJ 360; [2010] 5 CLJ 123, CA (refd)

Menteri Dalam Negeri & Ors v Titular Roman Catholic Archbishop of Kuala Lumpur [2013] 6 MLJ 468; [2013] 6 MLRA 8, CA (refd)

Mitsui & Co Ltd and another v Flota Mercante Grancolombiana SA; The Ciudad de Pasto, The Ciudad de Neiva [1989] 1 All ER 951, CA (refd)

Pendaftar Hakmilik, Pejabat Tanah dan Galian Negeri Selangor v Bank Pertanian Malaysia Bhd [2016] 3 MLRA 296 (refd)

R v Sloan [1990] 1 NZLR 474, HC (refd)

Suruhanjaya Pencegahan Rasuah Malaysia & Ors v Latheefa Beebi Koya & Anor [2017] 5 MLJ 349, FC (refd)

Legislation referred to

Federal Constitution art 13(1)
Malaysian Palm Oil Board Act 1998 ss 20, 53, 56, 56(1), (3), 57, 58, 74
Malaysian Palm Oil Board (Licensing) Regulations 2005 reg 5(1)(i)

Nur Afiqah bt Mohd Ashriee (Aizul Rohan bin Anuar with her) (Saiful, Roger & Co) for the appellants.
Noor Hisham bin Ismail (Najib bin Zakaria with him) (Najib, Hisham Isa) for the respondents.

Abd Majid J:

INTRODUCTION

[1] Both the applicants are private local companies engaging in selling, buying, forwarding and exporting used cooking oil. They seek for a judicial review over the first respondent's decision made on 4 August 2020 refusing to return the seized used cooking oil.

FACTS

[2] The first and the second applicant had separately entered into several contracts with one Kazhou Pte Ltd ('KPL') incorporated in Singapore to sell and forward 6,000 mt and 4,200 mt of used cooking oil ('seized oil') respectively and KPL in turn appointed one Kyrox Sdn Bhd ('KSB') to export the seized oil to one company Oberosterreichische Biodiesel-Bulgaria Ltd being the purchaser. Pursuant to the said contracts the first applicant had forwarded 5,000 mt while the second applicant had forwarded 4,200 mt of the seized oil in stages to a storage facility in Butterworth prior exportation.

[3] On 26 May 2020 at about 0100 hours the respondents' officials conducted a raid and seized the said oil. As there was no further action being taken up, the solicitors acting for both the applicants separately wrote to the first respondent on 22 July 2020 and 23 July 2020 seeking for the return of the seized oil. Both the applicants claimed title in the seized oil as KPL had not paid them in full. The first respondent vide a letter dated 4 August 2020 rejected both applications citing the matter was under investigation.

[4] The fact that the seized oil is categorised as sludge palm oil/SPO under the Malaysian Palm Oil Board (Licensing) Regulations 2005 ('the regulations') was not in dispute.

ENCLOSURE 12

[5] In this application the applicants seek for:

(a) *perintah Certiorari membatalkan dan/atau mengenepikan keputusan responden pertama bertarikh 4 Ogos 2020 terhadap pemohon pertama dan/atau pemohon kedua*;

(b) *satu deklarasi bahawa keputusan responden pertama menolak permohonan pemohon-pemohon melalui suratnya bertarikh 4 Ogos 2020, adalah tidak dilakukan secara suci hati ('good faith') dan dengan kepercayaan wajar ('reasonable belief'), dan tidak menurut undang-undang serta tanggungjawab statutori responden pertama dan/atau tidak munasabah, adalah tidak sah dan terbatal di sisi undang-undang*;

(c) *perintah bahawa keseluruhan kesan dan/atau tindakan lanjutan terhadap keputusan melalui surat-surat bertarikh 4 Ogos 2020 kepada pemohon pertama dan/atau pemohon kedua adalah digantung sehingga pelupusan sepenuhnya permohonan semakan kehakiman ini*;

(d) *perintah Mandamus terhadap responden pertama untuk memulangkan dan/atau melepaskan minyak masak terpakai yang telah disita kepada pemohon pertama ialah sebanyak 5,000 metrik tan dalam tempoh tiga hari dari tarikh perintah ini diberikan*;

(e) *perintah Mandamus terhadap responden pertama untuk memulangkan dan/atau melepaskan minyak masak terpakai yang telah disita kepada pemohon kedua iaitu sebanyak 4,200 metrik tan dalam tempoh tiga hari dari tarikh perintah ini diberikan*;

(f) *gantirugi kerosakan minyak masak terpakai yang telah disita kepada pemohon-pemohon*;

(g) *kos untuk permohonan ini dijadikan kos dalam kausa*;

(h) *gantirugi am untuk ditaksirkan oleh Mahkamah Yang Mulia ini*; dan

(i) *perintah-perintah dan/atau arahan-arahan selanjutnya yang mungkin diberikan atau dibuat yang Mahkamah Yang Mulia ini yang wajar dan suaimanfaat*.

[6] The application is premised upon that:

(a) the impugned decision was unreasonable as the respondents failed to consider that:

(i) applicants remain having title in the seized oil and licensed under the regulations;

(ii) the applicants' right as having title in the said seized oil has been

infringed under the law of contract and art 13(1) of the Federal Constitution;

(iii) the chemist report confirming that the seized oil is the product of oil palm had been obtained very much earlier;

(iv) there was inordinate delay in the investigation which has cause the seized oil to deteriorate in quality and value; and

(v) the letter dated 4 August 2020 gave no indication of any offence being committed by the applicants.

(b) the respondents had not acted in good faith and without reasonable belief in making the impugned decision and have violated the principle of natural justice; and

(c) the refusal to return the seized oil was not in accordance with recognised principles.

[7] The respondents in opposing this application averred that KSB was not a licensed exporter for sludge palm oil and has been arraigned on a charge of attempting to export palm oil without licence under reg 5(1)(i) of the Regulations on 1 September 2020 and that pending prosecution the seized oil could not be released or returned.

SUBMISSIONS

By the applicants

[8] The learned counsel for the applicants submitted that since KPL had not fully paid for the seized oil, the same had not been passed to KPL. In support, she cited the case of *Mitsui & Co Ltd and another v Flota Mercante Grancolombiana SA; The Ciudad de Pasto, The Ciudad de Neiva* [1989] 1 All ER 951. Further the applicants have not been charged with any offence in respect of the seized oil. It was argued that the respondents took a long time to investigate notwithstanding that the chemist report was ready about a month after the seizure. However only on 27 July 2020 KSB and one Chew Gek Suan were charged with attempting to export the seized oil without licence. It was submitted that such offence did not entail lengthy investigation.

[9] The learned counsel pointed out that the respondents in refusing to return or release the seized oil also relied on s 53 of the Malaysian Palm Oil Board Act 1998 ('the Act') when they had not shown whether the conditions stated therein had been satisfied and that the real intention was to deprive the applicants of the seized oil.

[10] In addition the learned counsel argued that the respondents failed to

comply with s 57 of the Act which mandates them to refer the seized oil to the magistrate once there was a claim for the same and that the applicants are licensed to deal with the seized oil, which fact was never in dispute. They are the aggrieved party affected by the impugned decision.

[11] It was further submitted that the first respondent had acted beyond his jurisdiction, which is provided under s 20, in determining which party has the title over the seized oil and that the decision was made in bad faith and would not be protected under s 74 of the Act. References were made to *Menteri Dalam Negeri & Ors v Titular Roman Catholic Archbishop of Kuala Lumpur* [2013] 6 MLJ 468; [2013] 6 MLRA 8; *Pendaftar Hakmilik, Pejabat Tanah dan Galian Negeri Selangor v Bank Pertanian Malaysia Bhd* [2016] 3 MLRA 296 and *Abdul Aziz Lebai Milin & Ors v Suruhanjaya Pengangkutan Awam Darat* [2016] MLRHU 1613.

[12] The impugned decision was an administrative decision and has nothing to do with the criminal prosecution initiated against KSB and Chew Gek Suan hence, amenable to judicial review.

By the respondents

[13] The learned counsel for the respondents submitted that the application was misconceived in law. It was submitted by the learned counsel for the respondents that the officers of the second respondents were carrying out their investigative function under the Act and therefore their actions were not reviewable. He referred to *R v Sloan* [1990] 1 NZLR 474; *Ahmad Azam bin Mohamad Salleh & Ors v Jabatan Pembangunan Koperasi Malaysia & Ors* [2004] 4 MLJ 86 and *City Growth Sdn Bhd & Anor v The Government of Malaysia* [2006] 1 MLJ 581.

[14] It was further submitted that s 57 of the Act has no application because prosecution has been instituted against KSB and the seized oil would be tendered as exhibit therefore it was not possible to return or release the same to the applicants. He contended that a claim under the said provision can only be made by the owner if there was no prosecution as provided for under sub-s 56(3). The learned counsel further referred to s 58 of the Act which provides that the first respondent has the discretion even to return or release the seized oil to the person who had custody of the same when it was confiscated.

[15] It was further submitted that the impugned decision was not amenable to judicial review as once prosecution has been instituted by virtue of sub-s 56(1) of the Act, the fate of the seized oil would be decided by the magistrate. Therefore the first respondent cannot return the seized oil. He referred to *Menteri Besar Negeri Pahang Darul Makmur v Seruan Gemilang*

Makmur Sdn Bhd [2010] 4 MLJ 360; [2010] 5 CLJ 123. He argued further that the civil court should not interfere with the process of criminal proceeding. The following cases were cited namely, *Government of Malaysia v Lim Kit Siang* [1988] 2 MLJ 12 and *Dato' Seri Anwar Ibrahim v Mohamad Hanafiah Zakaria & Ors* [2012] 7 CLJ 609.

DECISION

[16] In *Suruhanjaya Pencegahan Rasuah Malaysia & Ors v Latheefa Beebi Koya & Anor* [2017] 5 MLJ 349 the respondents applied to quash the notices issued ordering them to appear at the respondent's office for their statements to be recorded. The Federal Court in allowing the appeal at p 366 had this to say,

> [42] The general conclusion that can be drawn from the cases referred to above is that the actions or decisions of a public authority in exercise of its powers in the course of criminal investigation or enquiry is not open to judicial review. Therefore the answer to the question posed to this court is that the exercise of legitimate power, namely, the issuance of the notice pursuant to s 30(1)(a) of the Act by the first appellant through the third appellant is not amenable to judicial review. The notice was issued in order to assist the appellants in the investigation of a corruption offence under s 16(b) of the Act. To hold otherwise, would expose the criminal investigative processes of all law enforcement agencies to constant judicial review. On the facts of this case, the respondents failed to establish that the notice was issued mala fide or in bad faith.

Clearly from the above quoted passage the applicants have to show whether the impugned decision was mala fide and the discretion was illegitimately exercised.

[17] The complaints were that the propriety right over the seized oil remained with them since KPL had not paid the purchase price in full. The contracts entered were terminated by the applicants on 21 August 2020 (see encl 9). The question of propriety right, to my mind, is not relevant at this stage particularly so when the matter is pending before the Magistrate Court in Butterworth. It is for the presiding magistrate to decide at the end of the day in accordance with s 56 of the Act which reads:

> 56(1) If prosecution is instituted with regard to any oil palm product or the proceeds of sale thereof, or any conveyance, machinery, contrivance, equipment, book, record, document or other article seized under this Act, the court before which the prosecution with regard thereto has been held may order the forfeiture or release of the thing concerned.
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> (2) The court shall order the forfeiture of the oil palm product or the proceeds of sale thereof, or the conveyance, machinery, contrivance, equipment, book, record, document or other article if it is proved to the satisfaction of the court that an offence under this Act has been committed and that the oil palm product or the proceeds of sale thereof, or the conveyance, machinery, contrivance, equipment,

book, record, document or other article was the subject matter of or was used in the commission of the offence, notwithstanding that no person may have been convicted of such offence.

(3) If no prosecution is to be instituted with regard to any oil palm product or the proceeds of sale thereof, or any conveyance, machinery, contrivance, equipment, book, record, document or other article seized under this Act, the authorized officer in whose custody it is held shall notify the person from whom the oil palm product or the proceeds of sale thereof, or the conveyance, machinery, contrivance, equipment, book, record, document or other article was seized of that fact and of the provisions of section 57.

(4) A notice under subsection (3) shall be in writing and shall be sent to the last known address of the person concerned.

(5) If no claim is made under section 57 within thirty days from the date of service of the notice referred to in subsection (3), the oil palm product or the proceeds of sale thereof, or the conveyance, machinery, contrivance, equipment, book, record, document or other article seized shall be taken and deemed to be forfeited at the expiration of that period.

[18] The first respondent is no longer seised with the power to return or release the seized oil once a prosecution is instituted. It is for the same reason that I think I too have no the power to return it at this stage even if the decision of the first respondent was tainted with illegality, irrationality or procedural impropriety. It is not the business of a civil court to meddle into the affairs of a criminal court. Even if the evidence is illegally obtained, it is admissible. The so-called propriety right can be asserted in a civil suit against KPL. And it is not for me to decide on that issue in this application.

[19] Section 57 of the Act will apply when there is no prosecution and sub-s 56(3) deals with seizure which does not culminate in a prosecution. Clearly s 57 has no application to this case.

[20] The prosecution was instituted after the decision was made, meaning that the matter was under investigation at the material time. As stated in the letter dated 4 August 2020. Hence, no way could the seized oil be returned or released as such action may stifle any impending prosecution. In *Empayar Canggih Sdn Bhd v Ketua Pengarah Bahagian Penguatkuasa Kementerian Perdagangan Dalam Negeri dan Hal Ehwal Pengguna Malaysia & Anor* [2018] supp MLJ 16 the respondents' officers raided the appellant's new factory where two machines were seized. There was no approval given by the ministry for the appellant to operate them. The appellant filed a judicial review, inter alia, to quash the decision of the second respondent for refusing to release the machines. Ahmad Maarop FCJ (as he then was) at p 29 said:

[24] Thus it is clear to us that the seizure challenged by the appellant in its judicial review application was an act done by the respondents' officers in the exercise of a

function in relation to a criminal investigation for an offence under Act 606. In our view such an exercise of power in the course of a criminal investigation is not open to review under O 53 of the RHC. To hold otherwise would, to our mind, be exposing the criminal investigative process of all law enforcement agencies in the country to constant judicial review which surely could not have been the intention of parliament. A balance has to be struck between the right of disgruntled persons such as the appellant, to seek redress in the form of damages for the alleged wrongful seizure of its property and the duty of the investigative agency through its officers to bring wrongdoers to face justice by arresting them and collecting, in the course of investigation, whatever evidence against them. In this connection the need to conduct prompt and unimpeded criminal investigation is well recognised by the court (see *Ooi Ah Phua v Officer-in-charge Criminal Investigation, Kedah/Perlis* [1975] 2 MLJ 198, *Hashim bin Saud v Yahaya bin Hashim & Anor* [1977] 2 MLJ 116, *Datuk Seri Ahmad Said Hamdan, Ketua Suruhanjaya, Suruhanjaya Pencegah Rasuah Malaysia & Ors v Tan Boon Wah* [2010] 3 MLJ 193). If decisions made and actions taken in the process of criminal investigation pursuant to the power given by law, such as the impugned seizure in this case are amenable to judicial review, then criminal investigative machinery may not function smoothly and efficiently as it should be.

Thus, based on this authority I do not see how the applicants can persuade me to accede to their application.

[21] It is my view further that it is within the authority of the first respondent to dispose the seized oil pursuant to s 53 of the Act but of course it is not at his whims and fancies. There are pre-conditions to be satisfied before such power can be exercised. Still, the recourse is to sue for damages if the applicants can prove that the action of the first respondent is flawed. The decision dated 4 August 2020 was not amenable to judicial review.

[22] Based on the reasons discussed I dismissed the application with costs.

Application dismissed with costs.

Reported by Muhamad Azham Marwan